OWENSBY vs. CITY OF CINCINNATI, DEPO. OF CYRIL WECHT, M.D., 2-25-04

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CONDENSED TRANSCRIPT AND CONCORDANCE
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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ESTATE OF ROGER D. OWENSBY, JR., et al., Plaintiffs, -vs- CITY OF CINCINNATI, et al., Defendants.

Civil Action
No. 01-CV-769

DEPOSITION OF: CYRIL WECHT, M.D.

DATE: February 25, 2004
Wednesday, 11:00 a.m.

LOCATION: THE WECHT LAW FIRM
14 Wood Street
Pittsburgh, PA 15222

TAKEN BY: Plaintiffs

REPORTED BY: Anthony Jude Cordova, RPR
Notary Public
AKF Reference No. AC79595

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DEPOSITION OF CYRIL WECHT, M.D., a witness, called by the Plaintiffs for examination, in accordance with the Federal Rules of Civil Procedure, taken by and before Anthony Jude Cordova, RPR, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of The Wecht Law Firm, 14 Wood Street, Pittsburgh, Pennsylvania, on Wednesday, February 25, 2004, commencing at 11:00 a.m.

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(Original Exhibits returned to Dr. Wecht.)

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(Exhibit 2 marked for identification.)

- - - -

Q. I'm going to put one document in front of you, Doctor. I'll identify it as Wecht 2 entitled Subject Control Techniques. At the bottom, it says Office of Municipal Investigation, City of Cincinnati with the date of August 14, 2002. I just want to ask is that a document that you were provided in connection with the investigation?

MR. FREUND: Objection.

A. Yes.

Q. Go ahead, Doctor.

A. Yes. This is what was sent to me.

Q. What -- as you moved through the material, did you reach a point at which you did form opinions regarding Mr. Owensby's death?

A. Yes.

Q. And what did you do, if anything, to memorialize those opinions?

A. I wrote a report that was dated September 10, 2002, and it was sent to Mr. Gissiner.

- - - -

(Exhibit 3 marked for identification.)

- - - -

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Q. I'm going to hand you what I've marked as Wecht Deposition Exhibit 3 and ask you, Doctor, whether you can identify that as a true and accurate copy of the report that you generated on or about September 10, 2002?

MR. FREUND: Objection. Same basis. I just -- since you kind of changed gears, I just want to the renew the objection on the same basis as I had earlier, and as long as you're on these reports, then I will not object.

MR. MORGAN: Okay. Except as to form?

MR. FREUND: Yeah.

A. Yes, it is.

Q. Thank you, Doctor. Was this the first time in your career that you've been asked to conduct an evaluation of a death away from the time of death, in other words, subsequent to the death relying in part on autopsy results from a coroner in another jurisdiction?

A. No. I had done it hundreds of times before.

Q. Was there anything unusual about the nature of the material that you were provided in terms of your experience as a forensic pathologist?

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A. No. It was quite expected and seemed to be appropriate.

Q. Based on your knowledge, training and experience, are the documents that were provided to you the type of documents on which forensic pathologists regularly rely in their professional practice?

A. Yes.

Q. About how much time, if you know -- and if you need to dive into billing records or something to do that, I'll defer it -- but do you know about how much time you spent on the assignment?

A. I don't bill by the hour unless I'm specifically requested to, so I can't tell you from the records. Gee, I don't know. Not counting leading into today, looking over everything again and meeting with you for an hour prior to this deposition, but including the time that I had spent in a meeting that was held at my office with various people from Cincinnati, I don't know, I'd say it probably was around -- probably around 20 hours.

Q. You spoke of a meeting various people from Cincinnati. Do you have any idea who attended

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that meeting?

A. You know, I apologize. I'm -- I kind of disciplined myself to make notes of such meetings, at least in terms of people in attendance, but the answer is I did not do so. I can only tell you that the meeting was at my office. I think --

Q. That's fine, Doctor, if you don't have it.

A. I can just tell you the meeting was on August 14, and I'm sorry, I know there were officials, but I apologize, except I know that Mr. Gissiner was there, and that's all I remember, I mean in terms of a specific name.

Q. Understood. Thank you, Doctor.

MR. FREUND: What year? What year?

MR. MORGAN: 2002.

A. I'm sorry. August 14, 2002.

Q. Do you recall the position of any of the people involved? And, again, if not, that's fine.

A. I can only tell you that some were in the police department, and beyond that, I better not retrospectively conjecture.

Q. Fair enough. Do you recall what compensation you were paid by the city for your work?

A. Well, yes. I do have the -- I think, as far as

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I recall, there was the one charge of – it's $5,000, yes, and it included – it included the meeting and the records and the report and everything. Yeah. $5,000 is all that I charged.

Q. Doctor, as I read your report, the pages, the bottom of Page 1, 2, that is through about the middle of Page 5 is a factual summary of your understanding of events of the night of the Owensby homicide. I wonder if you would just describe the process that you went through to generate that factual summary.

A. I went through the statements and testimonies of the people involved, the police officers and Ms. St. Clair and Dr. Shultz. Well, actually, up to that point, Dr. Shultz was not involved. I'm sorry. He comes in later, so that I read through those materials to which I referred a while ago.

Q. You actually read Officer Jorg's statement, Officer Caton's statement and et cetera?

A. Yes, I did.

Q. Okay. Beginning on the third paragraph on Page 5, you detail – or summarize, rather, Dr. Shultz's autopsy findings, and I do have

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some specific questions about some of those findings, but in general, did you find Dr. Shultz's autopsy to be within the standard of good practice in anatomical pathology as you have developed a understanding of it over your 40 years?

MR. FREUND: Objection as to form.

A. Yes. It's a complete autopsy.

Q. Did you find any areas in Dr. Shultz's autopsy with which you disagreed?

A. Yes. One point.

Q. And what was that, sir?

A. Dr. Shultz had estimated a degree of coronary artery occlusion of the left anterior descending branch due to atherosclerosis as 50 percent, and my estimate was 30 to 40 percent at the most. It's just a small difference. That was the only thing I recall that I – I specifically felt was somewhat different.

Q. Did you develop an understanding or an opinion regarding why you and Dr. Shultz had a different view of that on that small question?

A. Well, you know, there's subjective interpretation. It's not like you take a ruler and you measure. It's not that he or I made a

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mistake. That's my take on it. I did express a comment in my report which is relevant to your question, namely that when you shrink in the process of preparing tissue for slides, then you have to take into account that the seeming degree of obstruction is really greater than it was in actual gross configuration. So that was what I thought may have been the case.

Q. Doctor, are you familiar with the phrase reasonable degree of medical certainty?

A. Yes.

Q. What does that phrase mean to you as a – as a forensic pathologist?

A. Well, it means to me a probability versus a possibility. It means that you feel it's something more likely than not. I always analogize it in talking and thinking about it and teaching about it. It's directly analogous to a surgeon that is examining someone with an acute abdomen.

There comes a time when the surgeon decides that he's got to go in and do an exploratory laparotomy. It may be appendicitis, it may not be, but he's now reached a point based upon physical exam,

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laboratory tests that he thinks it's more likely than not, something going on that is surgically repairable, correctable, and he makes a decision.

Up until that time, you see, it was a possibility. It hadn't reached a point of reasonable medical certainty. So that's outside the realm of law. So I take it to mean if you wanted to come up with a number, I guess 51 percent or better, but who can apply numbers? I don't know. For me it's something more likely than not. It's a probability versus even a distinct reasonable, logical possibility, but you think it's – it's now probable, not just simply possible.

Q. Do you have an opinion to a reasonable degree of medical certainty with respect to the mechanism of death of Roger Owensby, Jr.?

A. Yes.

MR. FREUND: Objection. Objection. Same basis as previously stated.

Q. And what is your opinion, sir?

A. I believe the primary mechanism of death was mechanical asphyxia.

Q. Would you define mechanical asphyxia,

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talk about there being focal subendocardial or papillary muscle fibrosis in Mr. Owensby's heart. Is that something which suggests that he might have died -- suggests to you that he might have died from some cause other than mechanical asphyxia?

A. No, no, not at all.

Q. What -- what -- what is -- what is that? What do you describe there?

A. Just what it is. You look under the microscope to see these small foci of fibrosis. It really means essentially nothing. Perhaps at some time in the past, there might have been some fleeting or transient ischemia for whatever reason that led to some microscopic fibrosis. It's -- it's not a significant finding in terms of understanding the cause of death or in terms of predicting life expectancy.

MR. FREUND: Page 9? Is it down at the bottom or top?

MR. MORGAN: Top.

Q. Did you -- did you find anything in Mr. Owensby's heart which you considered to be abnormal for a man of his age and, as you understand it, his condition?

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A. No. I would say that the 30- to 40-percent atherosclerosis of one coronary artery would be a little -- a little abnormal. I think that most 29-year-old men would not have -- would not have that. So I would have to say that that is a little -- somewhat more advanced than what I would expect in a 29-year-old person, but that varies greatly.

I mean, you know, people dying of heart attacks in their mid, late 20s is no longer something that causes a pathologist to be the least bit surprised. It just varies greatly, but the answer to your question is that it's probably -- it is, I would say, a little beyond the upper range of normal for a 29-year-old man. The other 2 vessels, the right coronary and the circumflex, were completely patent, and that's a good sign and that's quite -- quite normal.

Q. On Page 12 of your opinion toward the bottom of the page, you indicate that you identified a single focus of mild atherosclerosis. Is that the 30 to 40 percent that you just described?

A. Yes. That's what we were just talking about.

Q. Do you have an opinion to a reasonable degree of medical certainty, Doctor, whether that single focus of mild atherosclerosis was a reason -- and I'll use the word a advisedly -- a reason for Mr. Owensby's death by mechanical asphyxia?

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A. Yes, I have an opinion.

Q. What is that opinion?

A. I believe it was completely unrelated.

Q. And do you hold that opinion to a reasonable degree of medical certainty?

A. Yes.

Q. Do you believe that absent mechanical asphyxia, Mr. Owensby would have died on the night of November 7, 2000 as a result of his cardiac condition?

A. I have no reason whatsoever to believe that he would have died as a result of any findings or all the findings in the heart if it were not for the mechanical asphyxiation.

Q. Doctor, you talked about the 4 minutes. Was it 4 minutes of oxygen that the brain maintains?

A. 4 to 6 minutes in normal circumstances. If it's -- if you're hypothermic or you're heavily sedated with barbiturates, it could even be longer, but -- but normal processes in a

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normal environment, we talk about a 4- to 6-minute period in a person with, you know, essentially normal heart and lung conditions. It could be somewhat less if you've got someone that has a very bad heart or chronic obstructive lung disease. 4 to 6 minutes is what scientific literature pretty much talks about in terms of residual oxygen in the brain before you then get brain death.

Q. Do you see any indications in the autopsy of Mr. Owensby which would indicate -- or any other factors that -- with respect to Mr. Owensby which would indicate that he would be outside of the norm in that regard?

A. No, I do not.

Q. What does the 4 to 6 minutes of residual oxygen in the brain mean, if anything, with respect to the survivability of a -- of the application of force sufficient to initiate the mechanical asphyxia process?

A. Well, advanced or sometimes even basic cardiopulmonary resuscitation we now know, and it's just documented, it's replete through the medical/scientific literature worldwide, that a huge percentage of people can be salvaged if

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Q. The last contributing factor you identify is the lapse of time prior to the commencement of appropriate and critical resuscitative measures. Would you explain the relevance of the lapse of time?

A. Well, this question and my answer relate to what we have been discussing in terms of resuscitation. There is an inverse proportion that is applicable here. The sooner the intervention is undertaken, the greater is the likelihood of responsiveness and salvageability. The longer the lapse of time, the less likely is there to be a reversability and salvageability. The period of time is what I've expressed before. I refer to these times which I had gotten from the records. My answers before were given in response to the time periods that you set forth in your questions.

Q. Thank you, Doctor. Since you were provided records, I will represent to you that Officer Caton has testified that when he placed Mr. Owensby in the back of the Golf Manor police cruiser, quote, he was face down essentially with his head turned toward the

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front seat of the cruiser with one foot on the floor and one foot underneath him.

Do you have an opinion to a reasonable degree of medical certainty whether placing someone who is in the condition of Mr. Owensby after the altercation with his hands cuffed behind his back, face down in the back of a patrol – of a police cruiser is a candidate – an additional candidate for a contributing factor in the development of the pathophysiological process assuming that he was alive at the time that he was placed in the car?

MR. HARDIN: Objection. Objection.

MR. FREUND: I'll object.

A. Yes, I do.

Q. What is that opinion, sir?

MR. FREUND: Objection.

MR. HARDIN: Objection.

A. I believe that that kind of physical positioning would have been an additional aggravating factor in terms of Mr. Owensby's respiratory compromise. This position in its full form is referred to as positional asphyxiation. From what you have described,

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what the records have set forth, it would be at least a modified, semi or quasi form of positional – of potential positional asphyxiation, not the completely prone position but partially so and with the hands cuffed behind the back and then lying in that position prostrate. So, in my opinion, with reasonable medical certainty, that kind of positioning would have aggravated the situation and would have added to the respiratory embarrassment.

MR. HARDIN: Move to strike.

Q. You refer to the lapse of time – strike that. You refer to the potential resuscitative measures as appropriate and critical. Are those words selected advisedly or do they just capture your general impression of what would have been appropriate? That's a terrible question. I'll withdraw it. What did you mean by the use of the phrase appropriate and critical with respect to the resuscitative measures?

A. Appropriate because that's the thing to do. Critical because if you don't do it, you may be missing a chance to save the person's life.

Q. The last opinion you express, Doctor, is that

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there was no evidence of significant cardiac disease which is something we have discussed to some extent.

- - - -

(There was a discussion off the record.)

- - - -

(Exhibit 7 marked for identification.)

- - - -

Q. Dr. Wecht, have you ever heard a term called sudden cardiac death?

A. I guess I had.

Q. I'm going to hand you what I've marked as Exhibit Wecht 7, a document entitled Affidavit and signed by a Charles V., as in Victor, Wetli, W E T L I, M.D., under oath on 13 September 2002. Have you had an opportunity – as a result of my providing this document to your office, have you had an opportunity to review it?

A. Yes.

Q. Do you agree with Dr. Wetli that Mr. Owensby, Jr. expired as a consequence of what he refers to as sudden cardiac death?

A. No.

Q. Do you – looking at paragraph 5 on the second

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give my explanation.
So it may well have been a question or I may have just addressed it spontaneously, but my recollection is quite clear that nobody was arguing for this being a cardiac death, and when everybody left, you know, as far as I know, in terms of what was discussed there, you know, there seemed to be general acceptance, no -- no -- of what I concluded, there was no vote. That's my -- that was my impression of having been there.
MR. FREUND: Ask the answer be stricken.
Q. Doctor, are there any aspects of your findings or Dr. Shultz's findings which are significant to the -- to your opinions that you've stated here today which we have not discussed in the course of this deposition?
A. None that can think of at this time. I believe you've covered everything set forth in my report. You've addressed Dr. Wetli's opinions, a couple things that are not in the report. I can't think of anything.
MR. MORGAN: I have no further questions, Doctor. Thank you very much.

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MR. HARDIN: Before we go on, may I ask a favor? This is Don Hardin.
MR. FREUND: You can have it as far as I'm concerned, Don.
MR. HARDIN: The doctor referred to an exhibit -- or I'm sorry -- within his file, a synopsis of events and I just, since I'm not there, would like to see if I can get a copy of that synopsis faxed to me.
MR. MORGAN: You mean before you question?
MR. HARDIN: Yes.
- - - -
(There was a discussion off the record.)
- - - -
EXAMINATION
- - - -
BY MR. FREUND:
Q. Doctor, my name is Neil Freund, and I am one of the lawyers for the City of Cincinnati and a couple of the officers, so I'm going to start out and ask you some questions.
MR. MORGAN: I'm sorry. Could I interrupt, just ask you to specify which officers?

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MR. FREUND: Sellers and -- who else do you represent, Geri?
MR. FREUND: A couple of the officers.
MR. MORGAN: Individuals.
MS. GEILER: I'm sorry. Are you ready?
MR. FREUND: Yeah. I'm ready.
MS. GEILER: Okay. We represent Streicher and Frazill and Hodge and Sellers.
MR. FREUND: All right. Anything else?
MR. MORGAN: No, thank you.
MS. GEILER: Officially.
Q. Doctor, as far as my questions are concerned, I first want to ask you a few questions about your background and all the things that you've done in your busy life. In reviewing your CV, if I could find it, appears that you -- you are not only a physician, but also a lawyer; is that correct?
A. Yes.
Q. And when did you get your legal degree?
A. June 1962.
Q. Okay. And then did you obtain a license to

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actually practice?
A. Yes. I became licensed in Pennsylvania -- well, I took the exam in the -- I guess the fall. I don't know when I heard, either late '62 or into '63. I'm not sure.
Q. Okay. Are you still licensed to practice in the State of Pennsylvania?
A. Yes.
Q. Or the Commonwealth of Pennsylvania?
A. Yes.
Q. Yes. Anywhere else?
A. No. Well, the Federal courts.
Q. All right. So you can practice law in Federal courts also?
A. Well, how does that work? The District Courts, the Third Circuit, and the Supreme Court. I've never done it, so -- but I think that's the way it works. I don't think -- I think that Federal licensure is in your own district and your own circuit, and then if you made the trip to the Supreme Court as a Bar Association function, then you got sworn in there.
Q. And then you also continued your legal education, it looks like, at the University of Maryland; is that right?

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MR. MORGAN: Object to the form.
A. Some of the things I had seen, I guess, and others I had read and, I believe, some people I talked to.
Q. That's one of the cases that you participated in?
A. I was a consultant, yes. I did not testify.
Q. Okay. A consultant for Simpson or for the --
A. For the defense.
Q. For Simpson?
A. Yes, for the defense attorneys, for -- O.J. Simpson was the defendant. It was his attorneys who consulted me, not Mr. Simpson.
Q. Okay. You've written extensively on the assassination of President John F. Kennedy; is that right?
A. Yes.
Q. And I think you told the folks that you were on a forensic panel that later reviewed the assassination; is that true?
A. Yes.
Q. And that panel reached certain conclusions; is that correct?
A. The specific panel did, yes, and then the overall Congressional committee did.

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Q. How many forensic pathologists were on that panel?
A. 9.
Q. And how many dissenters were there to that panel?
A. The basic dissent regarding the Warren Commission report's conclusion about a sole assassin, I was the only dissenter. The others had criticisms of various kinds with regard to whether Oswald was the sole assassin. I was the own dissenter.
Q. Right. You believed, and I think still believe, that there were other assassins, other shooters?
MR. MORGAN: Objection.
A. I believe there were 2 shooters; that's correct.
Q. But you were the only one on that panel that believed that?
MR. MORGAN: Asked and answered. Lack of foundation.
A. Yes. On that panel, that's correct.
Q. All right. Incidentally, how many board certified forensic pathologists do you believe, just give me a rough estimate, a reasonable

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estimate, there are in the United States of America?
MR. MORGAN: Foundation.
A. You say Board certified forensic pathologists?
Q. Yes.
A. Gee.
Q. Just give me a reasonable estimate.
A. I'm not sure. I think perhaps somewhere between 500 to 750 or it could even be more by now. I don't know.
Q. Okay. In other words, you are not the only forensic pathologist in the United States?
A. No, of course not.
MR. MORGAN: Object to the form.
Q. There are numerous other forensic pathologists available to look at cases similar to this as experts?
A. Yes, and they do. I have colleagues who do a lot of consulting work, of course.
Q. Okay. Have you ever taught forensic pathologists on how to be a good expert witness in front of a jury like you're testifying today?
A. I don't recall giving that kind of a talk to a group of forensic pathologists. I'm sure there

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have been forensic pathologists in groups, perhaps, where I have discussed this, but I don't recall -- well, maybe the American Academy of Forensic Sciences, past years, talked about this, but I don't remember whether it was only in the pathology section or more broadly for the academy.
Q. Okay. Any estimate of how many courses you may have taught about how to be a good expert witness?
A. I've never taught a course on that subject. It's been included in discussions, and I talk about it in the -- whenever I teach or give a lecture, but I never taught a course on that.
Q. All right. And where would you give those lectures?
MR. MORGAN: Objection.
A. Oh, medical students, medical societies, bar association groups, professional organizations of different kinds, medical legal, forensic scientific, graduate schools.
Q. All right. Let me -- let me see if I understand your prior testimony correctly, and I, for the record, would not ask these questions but for the fact that the Court has

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overruled our motion, and I don't want to waive anything by asking these questions, but I need to now. When did you first have contact with the Owensbys' attorneys?
A. You mean -- you mean the private attorneys now?
Q. Right.
MR. MORGAN: Object as vague.
A. I think that somebody, one of his attorneys, probably called to my office. The best I can deduce from this is I think it probably was in the fall of last year, maybe in October. The first letter I have here is dated November 20, but that's already talking about a deposition that as you know had been scheduled for December. So, obviously, I had been contacted before.
Q. Do you have any documents that would let us know to a more certain date when you would have first been contacted by the Owensbys' attorneys?
A. No, I do not. I do not. That's all I have. This is my entire file.
Q. When you began talking to the Owensbys' attorneys, had you received any type of letter of release by the City of Cincinnati?

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MR. MORGAN: Lacks foundation.
A. No. I had not received any letter. I recall telling my administrative assistant Eileen Young to be sure to determine if I could consult then with private attorneys. This doesn't happen often but once in a while, and I specifically told Eileen Young to do that.
Q. Would you pull out any document which would indicate that the City of Cincinnati ever released you to talk to the Owensbys' attorneys?
A. No. As I said, I don't have any such document.
Q. All right. You were under contract with the City of Cincinnati; is that correct?
MR. MORGAN: Vague.
A. Well, I had consulted with them and had submitted the report to them.
Q. Uh-huh.
A. Yes.
Q. Uh-huh. You were paid for your services?
A. Yes.
Q. You were paid $5,000; is that correct?
A. Yes. That covered everything, the review and analysis of the records, the written report, examination of the microscopic slides, some

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research that I had done and the meeting with the various officials at my office on August 14 of 2002.
Q. And it was your understanding that you were hired as a forensic pathologist consultant; is that correct?
MR. MORGAN: Lacks foundation.
A. Yes, by them, that's correct.
Q. When did your service end with the City of Cincinnati?
A. I considered it ended, I would say, after the meeting and then some --
Q. After what meeting?
A. After that meeting on August 14 and a subsequent letter that I received from Mr. Gissiner.
Q. Uh-huh.
A. Did you -- did you get back from her what was faxed?
MR. MORGAN: Yeah.
A. I'll tell you more specifically. You faxed more than one page. You faxed several pages.
Q. You mentioned earlier in your testimony that this was somewhat unusual that you would first act as a consultant for one side and then act

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as a consultant for the other side?
MR. MORGAN: I'm going to object as misstating the record. Mr. -- Dr. Wecht was contacted for the taking of his deposition. I'm not aware of anything in the record indicating that he's acting as a consultant for the plaintiff in this case.
Q. Do you want to answer the question?
MR. MORGAN: Objection. That's calling for a conclusion of law --
MR. HARDIN: For the record, we're having trouble hearing the statements being made by other counsel.
MR. MORGAN: Object as vague, calling, for a conclusion of law, lacking foundation, misstating the record.
Q. I think my question was you testified earlier it's somewhat unusual to act as a consultant for one party and then turn around and act as a consultant for another party; is that correct?
MR. MORGAN: Same objections. Same objections.
A. Not only is it unusual, but it's something that I would not do. I'm simply -- I would never go from one side to the other. This is a matter

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that deals with the very same subject that I dealt with before with absolutely no change in the opinions that I have expressed. I don't really know whose side anybody is on at this time.

Quite frankly, I'm aware one way or another that one of the officers is suing the City of Cincinnati. I think it's Mr. Hodge, Officer Hodge, and yet I heard the attorney from the City of Cincinnati say that she's representing Mr. Hodge. It doesn't look like I'm on different sides. It looks like the City of Cincinnati can't seem to make up its mind, not for me to -- I'm just testifying here pursuant to the opinions I have expressed.

I would never switch from one side to the other because in so doing, I would have to express different opinions by definition. Furthermore, if I had been apprised that I could not testify inasmuch as this had gone before a Federal judge, then, obviously, I would not be sitting here today.

Q. How much are you -- are you charging by the hour now?

A. No. I do not charge by the hour unless I'm

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requested to do so, as I said before.

Q. How do you charge?

MR. MORGAN: Vague.

Q. For your time?

A. Today and for the past year or so, I ask for a $5,000 fee. Back then, I asked for 300 -- 3,500. So I believe in this case that the charge would have been $3,500 to the attorney who consulted me, Attorney Paul Martins, I think is associated with Mr. Morgan, and then of course there's a charge for the deposition today.

Q. How much is that?

A. The deposition charge, I think, is -- I believe it's 2,500 for 2 hours, and then it's $500 per hour for each hour beyond 2 hours.

Q. I think there's a letter in the file somewhere that I saw that you were sent a check for maybe $7,500? Do you remember that?

A. Yeah. You're right. You're right. 7,000. So that would be the 3,500, the 2,500 is 6,000, and maybe an additional thousand was probably then for the -- my secretary would have charged for the meeting and review of all the records and everything in advance with Mr. Morgan.

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Q. And what was the charge to Mr. Paul Martins for one of the lawyers for the Owensbys? The 3,500, what was that charge for?

A. No. That's part of the 7,000.

Q. Yeah. What was that charge for?

A. Oh, that charge was to get out all the records and review everything all over again.

Q. Well, you had already written your opinions, hadn't you, Doctor?

MR. MORGAN: Objection. Argumentative.

A. Yes.

Q. Please?

A. Yes. I had written opinions. That is correct.

Q. And you wrote more opinions than we see or that we have marked as an exhibit, did you not? That was the opinions that you discussed -- I don't know what Exhibit number it is, but it's the September 10, 2002 -- Exhibit 3, I guess it is. See if you can find Exhibit 3.

A. September 10. Is this Exhibit 3? Addressed to Mr. Mark Gissiner?

Q. Yes. That's Exhibit 3.

A. Yes. That's right. That was the report that was sent to Mr. Gissiner.

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Q. Yeah. How many reports did you generate in this case?

A. Just this. This is the only report.

Q. You didn't generate a report which is dated August 8, 2002?

A. August 8? Could I see that please?

Q. Yeah.

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(There was a discussion off the record.)

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A. This is -- this was the first report, confidential memo to the file sent to, I guess, Mr. Gissiner which appears to be pretty much the same and some things have been highlighted.

Q. Yeah. That's my highlighting, Doctor.

A. Oh, I'm sorry. Okay. Yeah. So the answer is that this was sent first and then the formal report was sent one month later.

Q. So the report that you generated on August 8, 2002 wasn't the formal report?

A. No. I call it -- I call it what it is there, a confidential memo. That's the language we use in my office and sent as a work product to the attorney if that's what they prefer.

Q. Do you remember generating another report dated

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Q. All right. Are you familiar with Dr. Wetli?
You were asked earlier about his affidavit.
Are you familiar with Dr. Wetli?
A. Yes. I -- I -- I -- I know who he is. I know him. We've met through the years, but, yes, so, I mean, I know him.
Q. Do you respect him as far as being a competent forensic pathologist?
A. Yes. Dr. Wetli is a competent, Board certified, experienced forensic pathologist.
Q. Have you ever testified in cases with Dr. Wetli where you were on the same side?
A. Probably. I can't remember for sure, but the odds are that I have. I just don't know.
Nothing comes to mind, but it's very likely that that has happened or been consulted. I don't know -- you know, you asked about testifying. I just don't recall. The odds are probably somewhat greater that we have been consulted by the same side in some case over the years.
Q. Anyway, you think that -- at least even though you criticized his opinions in this case, you think he's a competent forensic pathologist, don't you?

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MR. MORGAN: Object to form.
A. Yes. I disagreed. I would prefer to say disagreed, and, yes, he is a competent, experienced forensic pathologist.
Q. And you would agree that me that 2 competent forensic pathologists like you and Dr. Wetli could have differing opinions?
MR. MORGAN: Vague, foundation, incomplete hypothetical.
A. Yes.
Q. Would you both be right with differing opinions?
A. It depends on how differing they are. If you have a 180-degree spectrum, if you're at opposite ends, you both can't be right, but what if you're -- you know, one's a little to the left of the middle and the other's a little to the right of the middle.
Q. Kind of like politics?
A. No political ramifications intended, just then -- you know, then you're both -- you both could be partly right and both could be partly wrong. Who knows, you know, and, of course, right or wrong, we don't know what God thinks.
So right or wrong, I guess you mean as

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perceived by third parties including judges and juries.
Q. Okay. Do you know a Dr. Tom Newman? I think he's a Board certified emergency medicine specialist in California.
A. Not offhand. Tom Newman. No. I don't recognize the name.
Q. Have you ever done any studies in asphyxiation, regarding asphyxiation?
A. I have not conducted any special studies. I have just dealt with cases. I think maybe some of the papers I've written have made reference to it. I have not conducted any special studies or undertaken any specific research projects.
Q. Okay. Thanks, Doctor. So -- so no studies, no specific studies and no specific research in asphyxiation?
A. That's correct.
Q. All right. Have you ever done any specific studies in what I will be talking about later in the field of sudden cardiac death syndrome?
A. No, no specific studies. Again, this is a subject I've dealt with in various papers that I have published and some book chapters. I

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have not conducted what I would consider to be a research project or special study.
Q. Okay. How many times do you believe that a judge or a jury has disagreed with your opinions that you've given in court like you are today?
MR. MORGAN: Foundation.
Speculation.
A. Oh, I have no way of knowing that. I don't keep track. I would say where I testify in my jurisdictions as a forensic pathologist called by the prosecution --
Q. I'm talking about as a consultant. I'm sorry.
A. Oh, I'm sorry. As a consultant, you mean aside from the -- my own county and the 5 counties for which I do autopsies? Well, that's where I'm a consultant, too, but you want me to exclude those?
Q. Yeah, because that's your job testifying in criminal cases here -- here in this area. I'm talking about acting as a consultant for O.J. Simpson or Jon-Benet Ramsey or all these other high-profile cases you've been in?
MR. MORGAN: Are you limited your question to those cases?

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MR. FREUND: No. I'm talking about independent consultant that doesn't involve his job here in Allegheny County.
MR. MORGAN: Object to the form. Move to strike the prior reference.
A. I really -- I just have no way of answering that. Most of the time, I don't even know the results. Very few attorneys are thoughtful or considerate enough to take a moment to call or write. So I just don't know.
Q. How many times do you think that you have testified in court?
A. Now, here again, tell me in what capacity.
Q. In any capacity.
A. In any capacity?
Q. Yes.
A. I would say maybe around -- 40 years, probably around 500 in all kinds of cases.
Q. Okay. Have you done any additional review in this case since you've changed sides from Cincinnati to the Owensbys?
MR. MORGAN: Objection. Move to strike. Lacks foundation. Misstates the testimony. Argumentative.
A. I don't consider I changed sides. My role is

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as a forensic pathology consultant, and my opinions have not changed at all. The question that you asked, yes, I think that I -- I may have reviewed some additional materials -- not materials -- some additional book references or so on. I don't know for certain. I don't believe that I have received any additional materials from Mr. Martin or Mr. Morgan, not that I recall.
Q. Did you review the deposition testimony that was given in this case by Dr. Shultz?
A. No. Are you talking about something that took place recently?
Q. Yes.
A. No, because I -- I -- Mr. Morgan had mentioned that. The answer is no, I have not received that.
Q. Okay. Have you received anything recently from the Owensbys' attorneys?
A. No.
MR. MORGAN: Well, for the purposes of the record, you and the Doctor and I jointly watched the videotapes of the convenience store and the cruiser cam before the deposition.
THE WITNESS: Thank you.

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MR. MORGAN: I didn't provide that to the Doctor, but I showed it.
A. I saw that for the first time earlier today. That's right.
Q. And, surely, since you were ready to give opinions today, you didn't use those videotapes to support your opinions; is that correct?
A. No. I did not need the videos. That's right. I had never seen them.
Q. All right. I assume that you have no opinion whether or not Mr. Owensby resisted arrest in this case; is that correct?
MR. MORGAN: Objection.
A. That's correct. I would not express opinions in that regard.
Q. And I assume you also have no opinions as to whether or not Mr. Owensby attempted to run or escape in this case; is that correct?
A. I would not be expressing opinions in that regard.
Q. And I assume that you don't have any opinions on the extent of the struggle that took place in this case between Mr. Owensby and the police officers; is that correct?
MR. MORGAN: Vague.

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A. Well, other than the opinions which I have expressed that relate to what happened to Mr. Owensby and then that, of course, does correlate with some of those events, but beyond medical pathological opinions, no, I'm not expressing other opinions. If you mean police -- I don't know what you mean, so I better not speculate.
Q. All right. Do you know whether or not Mr. Owensby, when he hit the ground, went down back first or face first?
A. I'm trying to think if I know that from the reports.
Q. As you sit here, if you don't remember, just say so.
A. I'm not absolutely certain. The abrasions are on the front pretty much. I kind of think he went down face first, but that doesn't mean that he might not have gone down backward first and then been turned over. No. I don't know for certain -- I --
Q. I can accept that.
A. I'd have to check further.
Q. All right. Do you know how he went down, whether one officer took him down or more than

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that is a misrepresentation any more than to say because I testified in a shooting case for a prosecution one time, that testifying for the defense in another case. Every case has its own facts and circumstances. I don't know, I don't remember one single detail about that case, where it was, or who it was or anything. So I completely reject the statement that I testified exactly the opposite. I don't think that that is correct or fair.

Q. This is a reported case, and it says finally, Dr. Wecht gave – Wecht, that's you, Cyril Wecht. That's you, isn't it?

MR. MORGAN: Objection. Argumentative.

A. Yes. That's me.

Q. Okay. Gave the following explanation for petechial hemorrhages. The petechial hemorrhages in my opinion in this case were caused principally by the state of hypoxia, the decreased oxygen, the cardiac arrhythmia then which sent into motion leading to an ever greater diminution or compromise of oxygenation coupled with chest compressions that took place for 40 to 50 minutes at the hospital, coupled

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with whatever kind of compression may have taken – may have taken during the struggle between Mr. Lavoti and the other police officers and Mr. Biaz. That was your statement. Do you want to read it?

A. I don't have to read it. If that's –

Q. Is that accurate testimony, Doctor?

A. If that's what's reported, then it's accurate.

Q. I mean, is that accurate medically as far as you're concerned?

A. In that case, those were my opinions, yes.

Q. And in that case, your opinion was, Doctor, that the death was attributable to cardiac arrhythmia as opposed to mechanical asphyxiation and you said abnormal beating of the heat precipitated by an asthmatic attack that led to diminished oxygen that produces hypoxia, insult to the heart causing it to beat erratically. That's what you testified earlier. The cause of death in this particular case such as we have just discussed would be cardiac arrhythmia due to hypoxia.

A. What is your question?

Q. My question is can you have petechial hemorrhages from hypoxia alone?

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A. Yes. I think you can.

Q. All right. Can you have scleral hemorrhages from the hypoxia?

A. No, I don't think scleral hemorrhages of a substantial nature, no. Petechial hemorrhages are one thing. Scleral hemorrhages, I don't believe so.

Q. Can you have scleral hemorrhages from a cardiac arrhythmia?

A. I don't think so. I'm trying to think of cases. Conjunctival congestion, yes. Hemorrhage, scleral hemorrhages, I think not.

Q. Where can you have conjunctival hemorrhages that are caused by anoxia or hypoxia that is caused by a cardiac arrhythmia other than the eyes?

A. Well, conjunctival refers to the eyes.

MR. MORGAN: Object to the form.

A. So if you're asking me about anatomic sites other than the eyes –

Q. Right.

A. – you can get petechial hemorrhages on the lining of the lungs, on the lining of the heart, on the pericardial sac overlying the heart, in the mediastinal soft tissues in the

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chest. Those are some of the places that you can get petechial hemorrhages.

Q. Okay. Just change the subject for a second. What literature would you direct me to if I wanted to educate myself on sudden cardiac death?

A. Well, I would refer you to cardiology textbooks. First, heart disease, there are several out there. I don't remember any specific book, but there are some books that deal solely with heart disease. Of course, the prominent textbooks on internal medicine, Cecil, Loeb, Harrison, I'm sure they've got discussions, too, in the chapters dealing with heart disease, and then forensic pathology textbooks would deal with cardiac deaths since those kinds of cases fall into our jurisdiction many times.

Q. Would you agree with me, Doctor, that people can suffer a cardiac arrhythmia from extreme exertion?

A. It's within the realm of possibility, yes, and, but – and if you talk about older people, people with significant coronary artery disease or people with significant chronic lung

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disease, the answer is yes, that can happen.
Q. Would you agree with me that young people including athletes can suffer from sudden cardiac death from exertion alone?
A. That is possible, but in the cases where that happens, there's almost always some other explanation, dehydration, underlying previously undiagnosed heart disease or so on. There's almost always some physiological or anatomic explanation. But is it possible in the absence of any of those things? Yes. It's possible. It would be very infrequent, I would say rare for a young athlete in good condition with no anatomic, environmental explanation or factor at play.
Q. Would you agree with me, Doctor, that a young person like Mr. Owensby could suffer from a cardiac arrhythmia from a blow to the chest?
A. Commotio cordis as it is called, a severe blow to the chest leading to cardiac arrhythmia can occur. These are almost always associated with some very significant force. I've seen a couple involves a cue stick in a pool room and other things like that. A blow, if it were a very strong person with a very -- with a big

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fist striking a blow to the chest with considerable force, I would say it would have to be within the realm of theoretical possibility. I've never seen it with just a blow to the chest from a fist. I have seen it with injuries to the chest from instrumentalities of different kinds.
Q. Have you read the recent New England Medical Journal article by Dr. Merrin that came out this year regarding young athletes who died from blows to the chest from footballs, baseballs, hockey pucks, other sports objects?
A. No. I do not recall that article, but that would be consistent with what I said. Those are instrumentalities, a hockey puck, a hard-hit baseball, a football spiralling in with some force. That's completely consistent with what I've said.
Q. What is metabolic acidosis?
A. Metabolic acidosis is when the pH. goes down into the acid level and the kidneys then begin to malfunction and you'll get electrolyte disturbance. The oxygen goes down. The carbon dioxide pressure goes up. That is what is called metabolic acidosis.

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Q. And is someone who is exerting himself with extreme exertion, in other words, fighting, fighting as hard as he can for a period of a minute or 2, can that individual possible -- possibly develop metabolic acidosis?
A. I never like to say something is impossible in medicine unless it is within the realm of physical impossibility. I find it extremely unlikely, highly improbable. Is it possible? Could there ever be, has there ever been such a case? I can't rule that out, but I think it's extremely unlikely to get metabolic acidosis in a 29-year-old person following a struggle of a minute and a half or 2. I'd find that extremely unlikely.
Q. Would you agree with me that as far as a review of the autopsy report itself, if you take the autopsy report itself without -- without the histories or without other input, you really need to search for a cause of death? I mean, it's not obvious from autopsy findings?
A. No. I would disagree. I think if one knew nothing and you were looking at the 29-year-old man and you did the kind of examination that there Dr. Shultz did perform and you saw these

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2 large areas of hemorrhage deep in the muscles of the back on each side and you found petechial hemorrhages in the eyes and you found wet, heavy, congested, edematous lungs, I believe that almost all forensic pathologists who then would be asked what is your primary, most likely diagnosis, Doctor, would opt for some kind of mechanical asphyxia.
The only other thing -- I mean, putting that all together, that's what you would come up with I think in most instances. You would want to know more. I'm not suggesting that that should be the beginning and end. I would insist on getting background information to the extent possible, but you asked me if you had only that to deal with.
Q. How would you rule out an arrhythmia, Doctor?
A. I would rule out an arrhythmia in a couple of ways. One, the finding of an essentially normal heart is one, and then the positive findings of these other things that in my opinion, especially -- well, the bruises in the back, the deep hemorrhages -- I shouldn't call them -- but the deep intramuscular, perimuscular hemorrhages, they would have

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myocarditis. That would be a possibility.
Q. Okay. Are you aware in the studies that myocarditis has been known to be a factor in causing sudden cardiac death?
A. Yes. Acute myocarditis certainly can result in sudden cardiac death. There's no evidence, however, of a myocarditis in this case.
Q. Now, you have the remnants, as you just testified, as possibly having the fibrosis from myocarditis; isn't that true? Isn't that what you just said?
MR. MORGAN: Object to the form.
A. You had asked me a question before, and I said it is possible that the fibrosis could be the residua of an old myocarditis.
Q. Right?
A. You now asked me a question relating to sudden death associated with myocarditis, and the answer to that is not from any residual of an old myocardial infection. When you die suddenly from acute myocarditis, it's because you have active inflammation which just fortuitously and most unluckily for that individual, it hits along the pathways that control the rhythmic beating of the heart.

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That's how you die.
Inflammation itself is nothing. It won't even cause you to put a Band-Aid if it were on your hand, but if it gets in the pathway that controls the beating mechanism of the heart, but that's an active myocarditis. It has nothing to do, even it were known and it's strictly -- strictly theoretical, strictly conjectural as to whether or not there had ever been any myocarditis in the past.
Q. Doctor, are you familiar with the literature that indicates that old myocarditis which causes fibrosis is a known cause for cardiac arrhythmia?
MR. MORGAN: Objection to the form.
A. I don't know a specific article, but I would not disagree that it could lead to some cardiac arrhythmia if it were significant and if it impinged upon the special pathways. It's something that could happen.
Q. My question was are you familiar with the literature on the subject?
MR. MORGAN: Asked and answered.
A. And told you I don't know the specific article. I can only deal with the subject in a -- in a

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theoretical fashion.
Q. All right. So you would agree with me, however, that the muscle fibrosis in the heart is an abnormality?
A. Yes. It's abnormal in that it's, yeah, not part of a normal picture. That's correct.
Q. And you would agree with me that you didn't find any life-threatening injuries to Mr. Owensby's head on examination?
A. When you say I didn't find, the autopsy did not find and I have no disagreement with those findings.
Q. And essentially the findings were negative as far as the examination of the neck; is that correct?
A. That's correct.
Q. And essentially the examination was negative as far as examination of the chest?
A. No.
MR. FREUND: Object to the form.
A. We've been discussing the hemorrhages in the posterior chest wall.
Q. On the back. Okay. Maybe I'm not --
A. It's the back, but it's also the back of the chest wall.

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Q. Okay. That was my next question. I was going to talk to you about the back, but as far as the chest, the front of the body, there were no markings; is that correct?
A. On the front of the body, other than beneath the left nipple area, some faint abrasions, other than that, there were no injuries on the anterior thorax or front of the chest.
Q. Okay. Did you note whether or not Dr. Shultz found those heart abnormalities that we just talked about, the papillary muscle fibrosis or the focal subendocardial abnormality, did you -- did he note that on his autopsy report?
A. No, he did not.
Q. You also told the jury that he had a 50-percent stenosis -- or actually that was what Dr. Shultz said. You said it was 30- to 40-percent stenosis of the left anterior descending artery?
A. That's correct.
Q. And what was the cause for -- whether it's 30- to 40-percent blockage of the left anterior descending artery or 50 percent, what's the cause for that?
MR. MORGAN: Object to the form.

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A. Well, it's an aging process that we all undergo in varying degrees of a degenerative nature. What happens anatomically is that atherosclerotic material comprised of cholesterol begins to form on the inner lining, the intimal surface, and forms a plaque.
Q. That's not normal?
MR. MORGAN: Objection.
Q. Is that correct?
A. Well, it depends.
Q. For a 31-year-old?
A. I said that it was more than I would expect in a 29-year-old person. That's right.
Q. Okay. What are some of the causes for pulmonary edema?
A. Oh, the most common cause would be probably congestive heart failure. We see it with bronchial asthma where people have attacks. We see it in cases of myocardial infarcts. We see it in cases of brain injury or brain hemorrhage, natural disease quite often where the brain is not functioning properly. We can see it in cases of people drowning. You see it in cases of people who die from drug overdoses, especially heroin, central nervous system

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depressant family of drugs, all of the analgesics and sedatives and tranquilizers.
Q. And you can see it in cases of significant resuscitative or resuscitation attempts, can't you?
A. Not when a person is dead. If you have someone who is not dead and you are engaged in active resuscitation, you might get some congestion. Of course, the purpose of your doing the resuscitation is to get the heart going and not have the heart fail. It's the failing heart that leads to the congestion, so it's not the resuscitation itself that is doing it. The resuscitation is attempting to reverse or ameliorate the condition that is causing the congestion and the edema. If that were not the case, then you wouldn't do resuscitation because then you'd just be causing death from pulmonary congestion and edema. It's the failing heart for whatever reason that you are trying to get moving in order to prevent significant pulmonary edema and congestion.
Q. Would you agree with me that cardiac arrhythmias can cause pulmonary edema?
A. Yes.

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Q. And cardiac arrhythmias can cause sudden cardiac death?
A. Yes. If you have a severe cardiac arrhythmia, goes into ventricular fibrillation, then it can cause sudden death. Relatively sudden death depends upon the clinical circumstances of that particular case. Everything has to be completely thrown into the hopper for evaluation and scrutiny.
Q. Let me see if I understand this correct. If we assume for a moment that Mr. Owensby died from a cardiac arrhythmia – just assume that as being true for a moment – the first thing that would happen is his heart would be beating improperly – or what medical term would you prefer to use? Cardiac arrhythmia?
A. Irregularly.
Q. Irregularly. Then the next thing that would happen is, presumably, if that irregularity continued, the individual would become unconscious; is that correct?
A. Some. Some are benign, but others will lead then to unconsciousness as a ramification of the diminished oxygenation to the brain.
Q. Right. And the reason the individual would

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become unconscious with a cardiac arrhythmia is because he or she is suffering from hypoxia which is the diminished oxygen?
A. Well, yes. That's right.
Q. Whereas, on the other hand, if we assume for a moment that the patient or the individual died from mechanical – mechanical asphyxiation, the first thing that would happen is the individual would become unconscious because of hypoxia and then eventually, if that – if that mechanical asphyxiation remains, eventually the heart would stop?
MR. MORGAN: Objection. Misstates the testimony.
Q. Is that true?
A. Well, it's not a situation in which one process has to commence and terminate before another kicks in, but if I understand the thrust of your question, essentially, it's correct that in mechanical asphyxiation, the initial problem is the diminution of oxygen to the brain because of the compromise of the respiratory function, that's correct, and then as that compromise is in place, then at some point in time, the cardiac arrhythmia may start.

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Yes. That's correct. The lungs are primarily compromised in cases of mechanical asphyxia. The heart, if you have a sudden cardiac death unrelated to any kind of asphyxiation, by definition it's the heart which is going awry first.

Q. Well, actually, maybe my terms are not correct, but if you suffer from a cardiac arrhythmia, you're eventually not going to be able to get oxygen to the brain; true?

A. In many of the arrhythmias, yes. Some -- some, as I say, are benign, atrial flutter, atrial fibrillation, but others will lead to diminished oxygen to the brain.

Q. Causing an individual to become unconscious?

A. That's right.

Q. And if the arrhythmia continues, dead?

A. If it continues unabated and not reversed, it could lead to death.

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(There was a brief pause in the proceedings.)

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Q. Doctor, I just have a few more questions that I need to ask you. If we assume mechanical asphyxiation as described by you, have you done

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any studies or anything which would indicate how much weight needs to be on the back of an individual before he or she would be unable to breathe?

A. I have not done such studies myself. I would really have to check the literature to tell you if anybody else has in terms of specific weights. At this time, I cannot give you a specific amount of weight required. I think in part it's going to depend, too, on the body build of the individual. I mean, is it a 110-pound female or is it a 250-pound guy who is a weight lifter himself. So I don't know what kinds of studies, but I will look. Myself, I do not have an answer for you now.

Q. All right. And we know that Mr. Owensby was a well-built individual, don't we?

A. He was so described, yes, and he appears to be a solid guy.

Q. Okay. And I think I may have asked you this question already, and I apologize if I have. Have you done any studies as to the length of time that it would take for an individual to become unconscious from mechanical asphyxiation?

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A. No. I have not done such studies.

Q. All right. Okay. Have you done any studies as to how long -- somebody who is in full cardiac arrhythmia, how long will it take that individual to become unconscious?

A. Oh, that depends on the kind of arrhythmia. You see, again, it ranges from something benign like atrial flutter to more serious.

Q. V fib --

A. Dysfunctional arrhythmias going into ventricular fibrillation which is incompatible with life. The heart slithers like a snake but does no pumping.

Q. How long would that take?

A. Well, you wouldn't be getting any oxygen, so we're back to our residual cerebral oxygen business, 4 to 6 minutes. If you have ventricular fibrillation or cardiac standstill, you're going to die. You know, some people might stretch it out, but, anyhow, we use a 4 to 6 minute, but other kinds of arrhythmias, I can't tell you, I really -- I just don't know whether any studies have been done, you know, this kind of arrhythmia as, again, excluding -- excluding ventricular fibrillation.

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Q. Really, what I'm trying to find out from you, Doctor, is how long an individual who is in full V fib would stay conscious?

A. Oh, I think probably in 15 to 20 seconds, you'll become unconscious.

Q. All right. In your opinion, Doctor, was Mr. Owensby essentially deceased or clinically deceased at the time that they picked him up and took him to the car?

A. No, because, again, I go with the time, a minute and a half, or here, even if I take the maximal time of 2 and a half to 3 minutes, he still has that residual oxygen, and death in modern times is determined by brain death. So the answer is no, he would not have been deceased.

Q. Okay. If you assume for a moment that Dr. Shultz opined that he was for all practical purposes deceased when he was picked up or when he got up, whatever, when he was picked up, you disagree with that?

A. Well, if -- again, I'm using brain death criteria. If -- if -- and I don't know what Dr. Shultz said, but if he, Dr. Shultz or anybody were to say -- well, no, Dr. Shultz,

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MR. HARDIN: That is Exhibit 19?

MR. MORGAN: That is Exhibit 19.

Q. Okay. And that is your confidential memo 8/8?

A. Is that what it is, August 8? Yes, August 8. That's right.

Q. Okay. Who did you prepare that for?

A. I guess for Mr. Gissiner.

Q. Do you have any correspondence in your file prior to August 8, 2002? And when I say correspondence, I'm also asking whether you have any phone messages or anything from Mr. Gissiner to you?

A. We faxed to you what I had in my file, and there is a July 19 letter and -- from him to me, July 2 letter from me to --

Q. I don't have a July 19 letter.

A. July 19. Yeah -- no, no, I have an August 19.

Q. Okay.

A. Yeah. July 19, yes.

Q. I did not get a July 19 letter. That would be in your file. What was that about?

A. He just sending me the transcripts of Officers Hunter, Sellers, transcript of Dr. Shultz. It says here all 3 of those are the Caton trial

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and the internal investigation interview of Officer Jorg.

Q. All right. Let me ask you a question. When was the first time that you talked to anyone from the City of Cincinnati regarding giving your opinions or doing any review of this case?

A. The earliest letter that I have is one, July 2 from me to Mr. Gissiner acknowledging receipt of autopsy photos and slides, and I asked for additional materials that we had discussed. So obviously we talked on the phone. I don't see a letter from Mr. Gissiner, just my letter of acknowledgment of receipt of those couple of things July 2.

Q. So it would be reasonable for me to assume, then, that you had some sort of conversation with Mr. Gissiner before July 2?

A. Yes.

Q. Did you have to sign a contract --

A. Oh, wait, wait, wait, wait, wait, wait, wait, wait. Hold on. Here's a June 25 letter from Mr. Gissiner to me in which he sent me State Exhibits 33, 34, 35 utilized in the trial of Officer Jorg, and then he talks about OMI had attempted to obtain actual sleeve and then

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he talks about requesting the coroner's office to send slides to me as well as autopsy photos. So that was, yeah, June 25 was his first letter.

Q. All right. So can we have that one marked, then, as Exhibit 20?

MR. MORGAN: Yeah. Done.

- - - -

(Exhibit 20 marked for identification.)

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Q. And then you said there was your -- something from you to him or him to you on 7/2, July 2?

A. Yes. I acknowledge the receipt of those autopsy photos and slides.

Q. All right. I'd like that marked Exhibit 21.

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(Exhibit 21 marked for identification.)

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Q. Doctor, would it be reasonable to assume, then, that before June 25, '02, you and Mr. Gissiner had some sort of conversation about you being hired to perform some service for the city?

A. Yes, I believe so.

Q. But you have no correspondence prior to that date with regard to when this first contact was

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made?

A. No, I do not.

Q. Did the city require that you sign a contract with them so that they could pay you?

A. If they did, I would assume it would be here. I have no independent recollection at this time of some contract.

Q. All right. So you don't recall any conversation about having to sign anything in order to be paid for your service?

A. No. Here's a check from them dated 11/13/02.

Q. How much is that check for?

A. 5,000. And my bill to them preceding that payment. There's no contract or any other form.

MR. HARDIN: All right. I'd like to have the check marked as Exhibit 21.

MR. MORGAN: That would be 22.

MR. HARDIN: I'm missing 21 somewhere. Okay. 22. You're right.

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(Exhibit 22 marked for identification.)

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Q. And then you say, then, there was your bill is there?